From Tom Boyd.
MI District Judges
Association

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LAFLER *v.* COOPER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 10–209. Argued October 31, 2011—Decided March 21, 2012

Respondent was charged under Michigan law with assault with intent to murder and three other offenses. The prosecution offered to dismiss two of the charges and to recommend a 51-to-85-month sentence on the other two, in exchange for a guilty plea. In a communication with the court, respondent admitted his guilt and expressed a willingness to accept the offer. But he rejected the offer, allegedly after his attorney convinced him that the prosecution would be unable to establish intent to murder because the victim had been shot below the waist. At trial, respondent was convicted on all counts and received a mandatory minimum 185-to-360-month sentence. In a subsequent hearing, the state trial court rejected respondent's claim that his attorney's advice to reject the plea constituted ineffective assistance. The Michigan Court of Appeals affirmed, rejecting the ineffective-assistance claim on the ground that respondent knowingly and intelligently turned down the plea offer and chose to go to trial. Respondent renewed his claim in federal habeas. Finding that the state appellate court had unreasonably applied the constitutional effective-assistance standards laid out in *Strickland* v. *Washington*, 466 U. S. 668, and *Hill* v. *Lockhart*, 474 U. S. 52, the District Court granted a conditional writ and ordered specific performance of the original plea offer. The Sixth Circuit affirmed. Applying *Strickland*, it found that counsel had provided deficient performance by advising respondent of an incorrect legal rule, and that respondent suffered prejudice because he lost the opportunity to take the more favorable sentence offered in the plea.

Held:

1. Where counsel's ineffective advice led to an offer's rejection, and where the prejudice alleged is having to stand trial, a defendant must

altered the outcome. See *Kimmelman* v. *Morrison*, 477 U. S. 365, 379. Petitioner's position that a fair trial wipes clean ineffective assistance during plea bargaining also ignores the reality that criminal justice today is for the most part a system of pleas, not a system of trials. See *Missouri* v. *Frye*, *ante*, at ___. Pp. 4–11.

2. Where a defendant shows ineffective assistance has caused the rejection of a plea leading to a more severe sentence at trial, the remedy must "neutralize the taint" of a constitutional violation, *United States* v. *Morrison*, 449 U. S. 361, 365, but must not grant a windfall to the defendant or needlessly squander the resources the State properly invested in the criminal prosecution, see *United States* v. *Mechanik*, 475 U. S. 66, 72. If the sole advantage is that the defendant would have received a lesser sentence under the plea, the court should have an evidentiary hearing to determine whether the defendant would have accepted the plea. If so, the court may exercise discretion in determining whether the defendant should receive the term offered in the plea, the sentence received at trial, or something in between. However, resentencing based on the conviction at trial may not suffice, *e.g.*, where the offered guilty plea was for less serious counts than the ones for which a defendant was convicted after trial, or where a mandatory sentence confines a judge's sentencing discretion. In these circumstances, the proper remedy may be to require the prosecution to reoffer the plea. The judge can then exercise discretion in deciding whether to vacate the conviction from trial and accept the plea, or leave the conviction undisturbed. In either situation, a court must weigh various factors. Here, it suffices to give two relevant considerations. First, a court may take account of a defendant's earlier expressed willingness, or unwillingness, to accept responsibility for his or her actions. Second, it is not necessary here to decide as a constitutional rule that a judge is required to disregard any information concerning the crime discovered after the plea offer was made. Petitioner argues that implementing a remedy will open the floodgates to litigation by defendants seeking to unsettle their convictions, but in the 30 years that courts have recognized such claims, there has been no indication that the system is overwhelmed or that defendants are receiving windfalls as a result of strategically timed *Strickland* claims. In addition, the prosecution and trial courts may adopt measures to help ensure against meritless claims. See *Frye*, *ante*, at ___. Pp. 11–14.

3. This case arises under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), but because the Michigan Court of Appeals' analysis of respondent's ineffective-assistance-of-counsel claim was contrary to clearly established federal law, AEDPA presents no bar to relief. Respondent has satisfied *Strickland*'s two-part test.

SUPREME COURT OF THE UNITED STATES

No. 10–209

BLAINE LAFLER, PETITIONER *v.* ANTHONY COOPER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[March 21, 2012]

JUSTICE KENNEDY delivered the opinion of the Court.

In this case, as in *Missouri* v. *Frye, ante*, p. ___, also decided today, a criminal defendant seeks a remedy when inadequate assistance of counsel caused nonacceptance of a plea offer and further proceedings led to a less favorable outcome. In *Frye*, defense counsel did not inform the defendant of the plea offer; and after the offer lapsed the defendant still pleaded guilty, but on more severe terms. Here, the favorable plea offer was reported to the client but, on advice of counsel, was rejected. In *Frye* there was a later guilty plea. Here, after the plea offer had been rejected, there was a full and fair trial before a jury. After a guilty verdict, the defendant received a sentence harsher than that offered in the rejected plea bargain. The instant case comes to the Court with the concession that counsel's advice with respect to the plea offer fell below the standard of adequate assistance of counsel guaranteed by the Sixth Amendment, applicable to the States through the Fourteenth Amendment.

I

On the evening of March 25, 2003, respondent pointed a gun toward Kali Mundy's head and fired. From the rec-

appeal. *People* v. *Cooper*, 474 Mich. 905, 705 N. W. 2d 118 (2005) (table).

Respondent then filed a petition for federal habeas relief under 28 U. S. C. §2254, renewing his ineffective-assistance-of-counsel claim. After finding, as required by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), that the Michigan Court of Appeals had unreasonably applied the constitutional standards for effective assistance of counsel laid out in *Strickland* v. *Washington*, 466 U. S. 668 (1984), and *Hill* v. *Lockhart*, 474 U. S. 52 (1985), the District Court granted a conditional writ. *Cooper* v. *Lafler*, No. 06–11068, 2009 WL 817712, *10 (ED Mich., Mar. 26, 2009), App. to Pet. for Cert. 41a–42a. To remedy the violation, the District Court ordered "specific performance of [respondent's] original plea agreement, for a minimum sentence in the range of fifty-one to eighty-five months." *Id.*, at *9, App. to Pet. for Cert. 41a.

The United States Court of Appeals for the Sixth Circuit affirmed, 376 Fed. Appx. 563 (2010), finding "[e]ven full deference under AEDPA cannot salvage the state court's decision," *id.*, at 569. Applying *Strickland*, the Court of Appeals found that respondent's attorney had provided deficient performance by informing respondent of "an incorrect legal rule," 376 Fed. Appx., at 570–571, and that respondent suffered prejudice because he "lost out on an opportunity to plead guilty and receive the lower sentence that was offered to him." *Id.*, at 573. This Court granted certiorari. 562 U. S. ___ (2011).

II

A

Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process. *Frye*, *ante*, at 8; see also *Padilla* v. *Kentucky*, 559 U. S. ___, ___ (2010) (slip op., at 16); *Hill*, *supra*, at 57. During plea negotiations defendants are "entitled to the effective assis-

errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." *Ibid.*

In contrast to *Hill*, here the ineffective advice led not to an offer's acceptance but to its rejection. Having to stand trial, not choosing to waive it, is the prejudice alleged. In these circumstances a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. Here, the Court of Appeals for the Sixth Circuit agreed with that test for *Strickland* prejudice in the context of a rejected plea bargain. This is consistent with the test adopted and applied by other appellate courts without demonstrated difficulties or systemic disruptions. See 376 Fed. Appx., at 571–573; see also, *e.g.*, *United States* v. *Rodriguez Rodriguez*, 929 F. 2d 747, 753, n. 1 (CA1 1991) *(per curiam)*; *United States* v. *Gordon*, 156 F. 3d 376, 380–381 (CA2 1998) *(per curiam)*; *United States* v. *Day*, 969 F. 2d 39, 43–45 (CA3 1992); *Beckham* v. *Wainwright*, 639 F. 2d 262, 267 (CA5 1981); *Julian* v. *Bartley*, 495 F. 3d 487, 498–500 (CA7 2007); *Wanatee* v. *Ault*, 259 F. 3d 700, 703–704 (CA8 2001); *Nunes* v. *Mueller*, 350 F. 3d 1045, 1052–1053 (CA9 2003); *Williams* v. *Jones*, 571 F. 3d 1086, 1094–1095 (CA10 2009) *(per curiam)*; *United States* v. *Gaviria*, 116 F. 3d 1498, 1512–1514 (CADC 1997) *(per curiam)*.

Petitioner and the Solicitor General propose a different, far more narrow, view of the Sixth Amendment. They contend there can be no finding of *Strickland* prejudice arising from plea bargaining if the defendant is later convicted at a fair trial. The three reasons petitioner and

at 203.

The Court, moreover, has not followed a rigid rule that an otherwise fair trial remedies errors not occurring at the trial itself. It has inquired instead whether the trial cured the particular error at issue. Thus, in *Vasquez* v. *Hillery*, 474 U. S. 254 (1986), the deliberate exclusion of all African-Americans from a grand jury was prejudicial because a defendant may have been tried on charges that would not have been brought at all by a properly constituted grand jury. *Id.*, at 263; see *Ballard* v. *United States*, 329 U. S. 187, 195 (1946) (dismissing an indictment returned by a grand jury from which women were excluded); see also *Stirone* v. *United States*, 361 U. S. 212, 218–219 (1960) (reversing a defendant's conviction because the jury may have based its verdict on acts not charged in the indictment). By contrast, in *United States* v. *Mechanik*, 475 U. S. 66 (1986), the complained-of error was a violation of a grand jury rule meant to ensure probable cause existed to believe a defendant was guilty. A subsequent trial, resulting in a verdict of guilt, cured this error. See *id.*, at 72–73.

In the instant case respondent went to trial rather than accept a plea deal, and it is conceded this was the result of ineffective assistance during the plea negotiation process. Respondent received a more severe sentence at trial, one 3½ times more severe than he likely would have received by pleading guilty. Far from curing the error, the trial caused the injury from the error. Even if the trial itself is free from constitutional flaw, the defendant who goes to trial instead of taking a more favorable plea may be prejudiced from either a conviction on more serious counts or the imposition of a more severe sentence.

Second, petitioner claims this Court refined *Strickland*'s prejudice analysis in *Fretwell* to add an additional requirement that the defendant show that ineffective assistance of counsel led to his being denied a substantive or

outcome as legitimate 'prejudice,'" *Williams*, *supra*, at 391–392, because defendants would receive a windfall as a result of the application of an incorrect legal principle or a defense strategy outside the law. Here, however, the injured client seeks relief from counsel's failure to meet a valid legal standard, not from counsel's refusal to violate it. He maintains that, absent ineffective counsel, he would have accepted a plea offer for a sentence the prosecution evidently deemed consistent with the sound administration of criminal justice. The favorable sentence that eluded the defendant in the criminal proceeding appears to be the sentence he or others in his position would have received in the ordinary course, absent the failings of counsel. See Bibas, Regulating the Plea-Bargaining Market: From Caveat Emptor to Consumer Protection, 99 Cal. L. Rev. 1117, 1138 (2011) ("The expected post-trial sentence is imposed in only a few percent of cases. It is like the sticker price for cars: only an ignorant, ill-advised consumer would view full price as the norm and anything less a bargain"); see also *Frye*, *ante*, at 7–8. If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. If that right is denied, prejudice can be shown if loss of the plea opportunity led to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence.

It is, of course, true that defendants have "no right to be offered a plea . . . nor a federal right that the judge accept it." *Frye*, *ante*, at 12. In the circumstances here, that is beside the point. If no plea offer is made, or a plea deal is accepted by the defendant but rejected by the judge, the issue raised here simply does not arise. Much the same reasoning guides cases that find criminal defendants have a right to effective assistance of counsel in direct appeals even though the Constitution does not require States to provide a system of appellate review at all. See *Evitts*, 469

rights of criminal defendants," the Court observed, "are granted to the innocent and the guilty alike. Consequently, we decline to hold either that the guarantee of effective assistance of counsel belongs solely to the innocent or that it attaches only to matters affecting the determination of actual guilt." 477 U. S., at 380. The same logic applies here. The fact that respondent is guilty does not mean he was not entitled by the Sixth Amendment to effective assistance or that he suffered no prejudice from his attorney's deficient performance during plea bargaining.

In the end, petitioner's three arguments amount to one general contention: A fair trial wipes clean any deficient performance by defense counsel during plea bargaining. That position ignores the reality that criminal justice today is for the most part a system of pleas, not a system of trials. Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas. See *Frye*, *ante*, at 7. As explained in *Frye*, the right to adequate assistance of counsel cannot be defined or enforced without taking account of the central role plea bargaining plays in securing convictions and determining sentences. *Ibid.* ("[I]t is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process").

C

Even if a defendant shows ineffective assistance of counsel has caused the rejection of a plea leading to a trial and a more severe sentence, there is the question of what constitutes an appropriate remedy. That question must now be addressed.

Sixth Amendment remedies should be "tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." *United States* v. *Morrison*, 449 U. S. 361, 364 (1981). Thus, a remedy must "neutralize the taint" of a constitu-

injury may be to require the prosecution to reoffer the plea proposal. Once this has occurred, the judge can then exercise discretion in deciding whether to vacate the conviction from trial and accept the plea or leave the conviction undisturbed.

In implementing a remedy in both of these situations, the trial court must weigh various factors; and the boundaries of proper discretion need not be defined here. Principles elaborated over time in decisions of state and federal courts, and in statutes and rules, will serve to give more complete guidance as to the factors that should bear upon the exercise of the judge's discretion. At this point, however, it suffices to note two considerations that are of relevance.

First, a court may take account of a defendant's earlier expressed willingness, or unwillingness, to accept responsibility for his or her actions. Second, it is not necessary here to decide as a constitutional rule that a judge is required to prescind (that is to say disregard) any information concerning the crime that was discovered after the plea offer was made. The time continuum makes it difficult to restore the defendant and the prosecution to the precise positions they occupied prior to the rejection of the plea offer, but that baseline can be consulted in finding a remedy that does not require the prosecution to incur the expense of conducting a new trial.

Petitioner argues that implementing a remedy here will open the floodgates to litigation by defendants seeking to unsettle their convictions. See Brief for Petitioner 20. Petitioner's concern is misplaced. Courts have recognized claims of this sort for over 30 years, see *supra*, at 5, and yet there is no indication that the system is overwhelmed by these types of suits or that defendants are receiving windfalls as a result of strategically timed *Strickland* claims. See also *Padilla*, 559 U. S., at ___ (slip op., at 14) ("We confronted a similar 'floodgates' concern in *Hill*," but

Strickland, the state court simply found that respondent's rejection of the plea was knowing and voluntary. *Cooper*, 2005 WL 599740, *1, App. to Pet. for Cert. 45a. An inquiry into whether the rejection of a plea is knowing and voluntary, however, is not the correct means by which to address a claim of ineffective assistance of counsel. See *Hill*, 474 U. S., at 370 (applying *Strickland* to assess a claim of ineffective assistance of counsel arising out of the plea negotiation process). After stating the incorrect standard, moreover, the state court then made an irrelevant observation about counsel's performance at trial and mischaracterized respondent's claim as a complaint that his attorney did not obtain a more favorable plea bargain. By failing to apply *Strickland* to assess the ineffective-assistance-of-counsel claim respondent raised, the state court's adjudication was contrary to clearly established federal law. And in that circumstance the federal courts in this habeas action can determine the principles necessary to grant relief. See *Panetti* v. *Quarterman*, 551 U. S. 930, 948 (2007).

Respondent has satisfied *Strickland*'s two-part test. Regarding performance, perhaps it could be accepted that it is unclear whether respondent's counsel believed respondent could not be convicted for assault with intent to murder as a matter of law because the shots hit Mundy below the waist, or whether he simply thought this would be a persuasive argument to make to the jury to show lack of specific intent. And, as the Court of Appeals for the Sixth Circuit suggested, an erroneous strategic prediction about the outcome of a trial is not necessarily deficient performance. Here, however, the fact of deficient performance has been conceded by all parties. The case comes to us on that assumption, so there is no need to address this question.

As to prejudice, respondent has shown that but for counsel's deficient performance there is a reasonable

SUPREME COURT OF THE UNITED STATES

No. 10–209

BLAINE LAFLER, PETITIONER *v.* ANTHONY COOPER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[March 21, 2012]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, and with whom THE CHIEF JUSTICE joins as to all but Part IV, dissenting.

> *"If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. If that right is denied, prejudice can be shown if loss of the plea opportunity led to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence."* *Ante*, at 9.
>
> *"The inquiry then becomes how to define the duty and responsibilities of defense counsel in the plea bargain process. This is a difficult question. . . . Bargaining is, by its nature, defined to a substantial degree by personal style. . . . This case presents neither the necessity nor the occasion to define the duties of defense counsel in those respects . . . ."* *Missouri* v. *Frye*, *ante*, at 8.

With those words from this and the companion case, the Court today opens a whole new field of constitutionalized criminal procedure: plea-bargaining law. The ordinary criminal process has become too long, too expensive, and unpredictable, in no small part as a consequence of an intricate federal Code of Criminal Procedure imposed on the States by this Court in pursuit of perfect justice. See

surd for violation of a constitutional right. I respectfully dissent.

I

This case and its companion, *Missouri* v. *Frye*, *ante*, p. ___, raise relatively straightforward questions about the scope of the right to effective assistance of counsel. Our case law originally derived that right from the Due Process Clause, and its guarantee of a fair trial, see *United States* v. *Gonzalez-Lopez*, 548 U. S. 140, 147 (2006), but the seminal case of *Strickland* v. *Washington*, 466 U. S. 668 (1984), located the right within the Sixth Amendment. As the Court notes, *ante*, at 6, the right to counsel does not begin at trial. It extends to "any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial." *United States* v. *Wade*, 388 U. S. 218, 226 (1967). Applying that principle, we held that the "entry of a guilty plea, whether to a misdemeanor or a felony charge, ranks as a 'critical stage' at which the right to counsel adheres." *Iowa* v. *Tovar*, 541 U. S. 77, 81 (2004); see also *Hill* v. *Lockhart*, 474 U. S. 52, 58 (1985). And it follows from this that *acceptance* of a plea offer is a critical stage. That, and nothing more, is the point of the Court's observation in *Padilla* v. *Kentucky*, 559 U. S. ___, ___ (2010) (slip op., at 16), that "the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." The defendant in *Padilla* had accepted the plea bargain and pleaded guilty, abandoning his right to a fair trial; he was entitled to advice of competent counsel before he did so. The Court has never held that the rule articulated in *Padilla*, *Tovar*, and *Hill* extends to all aspects of plea negotiations, requiring not just advice of competent counsel before the defendant accepts a plea bargain and pleads guilty, but also the advice of competent counsel before the defendant rejects a

To be sure, *Strickland* stated a rule of thumb for measuring prejudice which, applied blindly and out of context, could support the Court's holding today: "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U. S., at 694. *Strickland* itself cautioned, however, that its test was not to be applied in a mechanical fashion, and that courts were not to divert their "ultimate focus" from "the fundamental fairness of the proceeding whose result is being challenged." *Id.*, at 696. And until today we have followed that course.

In *Lockhart* v. *Fretwell*, 506 U. S. 364 (1993), the deficient performance at issue was the failure of counsel for a defendant who had been sentenced to death to make an objection that would have produced a sentence of life

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Amendment *right to counsel* is to secure a fair trial" (emphasis added)); Brief for Petitioner 12–21 (same). To destroy that straw man, the Court cites cases in which violations of rights *other* than the right to effective counsel—and, perplexingly, even rights found outside the Sixth Amendment and the Constitution entirely—were not cured by a subsequent trial. *Vasquez* v. *Hillery*, 474 U. S. 254 (1986) (violation of equal protection in grand jury selection); *Ballard* v. *United States*, 329 U. S. 187 (1946) (violation of statutory scheme providing that women serve on juries); *Stirone* v. *United States*, 361 U. S. 212 (1960) (violation of Fifth Amendment right to indictment by grand jury). Unlike the right to effective counsel, no showing of prejudice is required to make violations of the rights at issue in *Vasquez*, *Ballard*, and *Stirone* complete. See *Vasquez*, *supra*, at 263–264 ("[D]iscrimination in the grand jury undermines the structural integrity of the criminal tribunal itself, and is not amenable to harmless-error review"); *Ballard*, *supra*, at 195 ("[R]eversible error does not depend on a showing of prejudice in an individual case"); *Stirone*, *supra*, at 217 ("Deprivation of such a basic right is far too serious to be treated as nothing more than a variance and then dismissed as harmless error"). Those cases are thus irrelevant to the question presented here, which is whether a defendant can establish *prejudice* under *Strickland* v. *Washington*, 466 U. S. 668 (1984), while conceding the fairness of his conviction, sentence, and appeal.

Those precedents leave no doubt about the answer to the question presented here. As the Court itself observes, a criminal defendant has no right to a plea bargain. *Ante,* at 9. "[T]here is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial." *Weatherford* v. *Bursey*, 429 U. S. 545, 561 (1977). Counsel's mistakes in this case thus did not "deprive the defendant of a substantive or procedural right to which the law entitles him," *Williams, supra,* at 393. Far from being "beside the point," *ante,* at 9, that is critical to correct application of our precedents. Like *Fretwell*, this case "concerns the unusual circumstance where the defendant attempts to demonstrate prejudice based on considerations that, as a matter of law, ought not inform the inquiry," 506 U. S., at 373 (O'Connor, J., concurring); he claims "that he might have been denied 'a right the law simply does not recognize,'" *id.,* at 375 (same). *Strickland*, *Fretwell*, and *Williams* all instruct that the pure outcome-based test on which the Court relies is an erroneous measure of cognizable prejudice. In ignoring *Strickland*'s "ultimate focus . . . on the fundamental fairness of the proceeding whose result is being challenged," 466 U. S., at 696, the Court has lost the forest for the trees, leading it to accept what we have previously rejected, the "novel argument that constitutional rights are infringed by trying the defendant rather than accepting his plea of guilty." *Weatherford*, *supra*, at 561.

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the Court therefore did not address it. *Id.,* at 391 (Powell, J., concurring in judgment); see also *id.,* at 380. *Kimmelman* made clear, however, how the answer to that question is to be determined: "The essence of an ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution *that the trial was rendered unfair and the verdict rendered suspect,*" *id.,* at 374 (emphasis added). "Only those habeas petitioners who can prove under *Strickland that they have been denied a fair trial* . . . will be granted the writ," *id.,* at 382 (emphasis added). In short, *Kimmelman*'s only relevance is to prove the Court's opinion wrong.

> ures led him to reject a plea offer that he now wishes to accept. However, the record shows that defendant knowingly and intelligently rejected two plea offers and chose to go to trial. The record fails to support defendant's contentions that defense counsel's representation was ineffective because he rejected a defense based on [a] claim of self-defense and because he did not obtain a more favorable plea bargain for defendant." *People* v. *Cooper*, No. 250583 (Mar. 15, 2005), App. to Pet. for Cert. 45a, 2005 WL 599740, *1 *(per curiam)* (footnote and citations omitted).

The first paragraph above, far from ignoring *Strickland*, recites its standard with a good deal more accuracy than the Court's opinion. The second paragraph, which is presumably an application of the standard recited in the first, says that "defendant knowingly and intelligently rejected two plea offers and chose to go to trial." This can be regarded as a denial that there was anything "fundamentally unfair" about Cooper's conviction and sentence, so that no *Strickland* prejudice had been shown. On the other hand, the entire second paragraph can be regarded as a contention that Cooper's claims of inadequate representation were unsupported by the record. The state court's analysis was admittedly not a model of clarity, but federal habeas corpus is a "guard against extreme malfunctions in the state criminal justice systems," not a license to penalize a state court for its opinion-writing technique. *Harrington* v. *Richter*, 562 U. S. ___, ___ (2011) (slip op., at 13) (internal quotation marks omitted). The Court's readiness to find error in the Michigan court's opinion is "inconsistent with the presumption that state courts know and follow the law," *Woodford* v. *Visciotti*, 537 U. S. 19, 24 (2002) *(per curiam)*, a presumption borne out here by the state court's recitation of the correct legal standard.

Since it is ambiguous whether the state court's holding

trial court what the remedy shall be? The answer, of course, is camouflage. Trial courts, after all, *regularly* accept or reject plea agreements, so there seems to be nothing extraordinary about their accepting or rejecting the new one mandated by today's decision. But the acceptance or rejection of a plea agreement that has no status whatever under the United States Constitution is worlds apart from what this is: "discretionary" specification of a remedy for an unconstitutional criminal conviction.

To be sure, the Court asserts that there are "factors" which bear upon (and presumably limit) exercise of this discretion—factors that it is not prepared to specify in full, much less assign some determinative weight. "Principles elaborated over time in decisions of state and federal courts, and in statutes and rules" will (in the Court's rosy view) sort all that out. *Ante,* at 13. I find it extraordinary that "statutes and rules" can specify the remedy for a criminal defendant's unconstitutional conviction. Or that the remedy for an unconstitutional conviction should *ever* be subject *at all* to a trial judge's discretion. Or, finally, that the remedy could *ever* include no remedy at all.

I suspect that the Court's squeamishness in fashioning a remedy, and the incoherence of what it comes up with, is attributable to its realization, deep down, that there is no real constitutional violation here anyway. The defendant has been fairly tried, lawfully convicted, and properly sentenced, and *any* "remedy" provided for this will do nothing but undo the just results of a fair adversarial process.

IV

In many—perhaps most—countries of the world, American-style plea bargaining is forbidden in cases as serious as this one, even for the purpose of obtaining testimony that enables conviction of a greater malefactor, much less

constitutional and statutory limitations upon the evidence that the prosecution can bring forward, and (in Michigan as in most States[3]) the requirement of a unanimous guilty verdict by impartial jurors; the Court says that his conviction is invalid because he was deprived of his *constitutional entitlement* to plea-bargain.

I am less saddened by the outcome of this case than I am by what it says about this Court's attitude toward criminal justice. The Court today embraces the sporting-chance theory of criminal law, in which the State functions like a conscientious casino-operator, giving each player a fair chance to beat the house, that is, to serve less time than the law says he deserves. And when a player is excluded from the tables, his *constitutional rights* have been violated. I do not subscribe to that theory. No one should, least of all the Justices of the Supreme Court.

* * *

Today's decision upends decades of our cases, violates a federal statute, and opens a whole new boutique of constitutional jurisprudence ("plea-bargaining law") without even specifying the remedies the boutique offers. The result in the present case is the undoing of an adjudicatory process that worked *exactly* as it is supposed to. Released felon Anthony Cooper, who shot repeatedly and gravely injured a woman named Kali Mundy, was tried and convicted for his crimes by a jury of his peers, and given a punishment that Michigan's elected representatives have deemed appropriate. Nothing about that result is unfair or unconstitutional. To the contrary, it is wonderfully just, and infinitely superior to the trial-by-bargain that today's opinion affords constitutional status. I respectfully dissent.

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[3]See *People* v. *Cooks*, 446 Mich. 503, 510, 521 N. W. 2d 275, 278 (1994); 6 W. LaFave, J. Israel, N. King, & O. Kerr, Criminal Procedure §22.1(e) (3d ed. 2007 and Supp. 2011–2012).

would represent an abuse of discretion in at least two circumstances: first, when important new information about a defendant's culpability comes to light after the offer is rejected, and, second, when the rejection of the plea offer results in a substantial expenditure of scarce prosecutorial or judicial resources.

The lower court judges who must implement today's holding may—and I hope, will—do so in a way that mitigates its potential to produce unjust results. But I would not depend on these judges to come to the rescue. The Court's interpretation of the Sixth Amendment right to counsel is unsound, and I therefore respectfully dissent.